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on behalf of herself and all others
similarly situated,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANGELA MCRA Y, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

UBER TECHNOLOGIES, INC,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

1. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES (CAL. LAB. CODE § 2802, WAGE ORDER 9-2001)
2. MINIMUM WAGE (CAL. LABOR CODE §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, WAGE ORDER 9-2001)
3. UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§17200-17208)
4. OVERTIME (CAL. LAB. CODE § 1194, 1198, 510 AND 554, WAGE ORDER 9-2001)
5. FAILURE TO PROVIDE PROPER ITEMIZED PAY STATEMENTS (CAL. LABOR CODE § 226(A), WAGE ORDER 9-2001)
6. DECLARATORY JUDGMENT (28 U.S.C. §§2201-02)

1 **I. INTRODUCTION**

2 1. Uber is a car service, which engages thousands of drivers across the state of
3 California who can be hailed and dispatched through a mobile phone application to transport
4 riders. Uber is based in San Francisco, California, and it does business across the United States
5 and extensively throughout California.

6 2. As described further below, Uber has misclassified its drivers, including Plaintiff
7 Angela McRay, as independent contractors when they should be classified under California law
8 as employees. Based on the drivers' misclassification as independent contractors, Uber has
9 unlawfully required drivers to pay business expenses (including but not limited to the cost of
10 maintaining their vehicles, gas, insurance, phone and data expenses, and other costs) in violation
11 of Cal. Lab. Code § 2802. Uber has also failed to guarantee and pay its drivers minimum wage
12 for all hours worked and it has failed to pay overtime premiums for hours worked in excess of
13 eight hours per day or forty hours per week in violation of Cal. Lab. Code §§ 1182.12, 1194.2,
14 1194, 1197, 1197.1, 1198, 1199, 510, and 554. Uber has also failed to provide proper itemized
15 wage statements that include all the requisite information, including hours worked and hourly
16 wages and that are accessible outside the Uber Application in violation of Cal. Lab. Code §
17 226(a). Uber's continued misclassification of its drivers as independent contractors is willful
18 misclassification in violation of Cal. Labor Code § 226.8.

19 3. Indeed, the California legislature has now passed a statute known as Assembly
20 Bill 5 (or "AB5"), which codifies the 2018 California Supreme Court decision, Dynamex
21 Operations W., Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20,
22 2018), under which an alleged employer cannot justify classifying workers as independent
23 contractors who perform services within its usual course of business. It has been widely
24 recognized by the California legislature, including the bill's author, that the purpose and intent of
25 this statute is to ensure that companies, including specifically Uber, stop misclassifying their
26

workers as independent contractors. Although Uber attempted to obtain a “carve-out” from this statute, it did not obtain such an exemption, and the legislature passed the statute so that it would include Uber drivers. Nevertheless, Uber has publicly stated that it intends to defy this statute and continue to classify its drivers as independent contractors – in violation of the express intent of the California legislature. This ongoing defiance of the law constitutes a willful violation of California law.

4. Plaintiff brings these claims on behalf of herself and all other similarly situated pursuant to Fed. R. Civ. P. 23. She seeks recovery of damages for herself and the class, as well as declaratory and injunctive relief, requiring Uber to reclassify its drivers as employees in California.

II. PARTIES

5. Plaintiff Angela McRay is an adult resident of Pittsburg, California, where she has worked as an Uber driver since November 2016.

6. The above-named plaintiff has brought this action on her own behalf and on behalf of all others similarly situated, namely all other individuals who have worked as Uber drivers in California who have not released all of their claims against Uber.

7. Defendant Uber Technologies, Inc. (“Uber”) is a corporation headquartered in San Francisco, California.

III. JURISDICTION

8. This Court has jurisdiction over the state law claims asserted here pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), since Defendant is a California citizen and, upon the filing of this complaint, members of the putative plaintiff class reside in states around the country; there are more than 100 putative class members; and the amount in controversy exceeds \$5 million.

1 at times arrive from, or are traveling to destinations, out of state, such as arriving at or leaving
2 train stations or airports.

3 27. Uber does not reimburse drivers for any expenses they incur while working for
4 Uber, including, but not limited to the cost of maintaining their vehicles, gas, insurance, and
5 phone and data expenses for running the Uber Application. Drivers incur these costs as a
6 necessary expenditure to work for Uber, which California law requires employers to reimburse.
7

8 28. Uber has violated Cal. Lab. Code §§ 1194, 1197 by failing to assure that drivers,
9 including Angela McRay, make the applicable minimum wage for all hours worked, after
10 accounting for their expenses and other deductions taken from their pay. The hours they work
11 include hours spent transporting passengers, driving to pick up passengers, and driving between
12 rides while awaiting the next ride.

13 29. Uber has violated Cal. Lab. Code §§ 1194, 1198, 510 and 554 by failing to pay its
14 drivers like Angela McRay the appropriate overtime premium for all overtime hours worked
15 beyond forty per week or eight per day. Ms. McRay has worked more than eight hours per day
16 and more than forty hours per week at various times since she began driving for Uber in
17 November 2016 and was never paid the appropriate premium for hours worked beyond eight per
18 day or forty per week. The hours that drivers such as Ms. McRay have worked include hours
19 spent transporting passengers, driving to pick up passengers, and driving between rides while
20 awaiting the next ride.

21 30. Uber has violated Cal. Lab. Code § 226(a) by failing to provide proper itemized
22 wage statements that include all the requisite information required by California law, including
23 hours worked and hourly wages and has failed to provide pay statements that are accessible to
24 drivers outside of the Uber Application.

25 31. On April 30, 2018, the California Supreme Court issued its decision in Dynamex
26 Operations W., Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20,

1 2018), which makes clear that Uber drivers should be classified as employees rather than as
2 independent contractors under California law for purposes of wage-and-hour statutes like the
3 ones at issue here. Under the “ABC” test adopted in Dynamex, in order to justify classifying the
4 drivers as independent contractors, Uber would have to prove that its drivers perform services
5 outside its usual course of business (in addition to other requirements), which it cannot do.
6 Notwithstanding this decision, Uber has willfully continued to misclassify its drivers as
7 independent contractors.
8

9 32. Furthermore, the California legislature has now taken steps to clarify and codify
10 the Dynamex decision by passing Assembly Bill 5, which has been passed by the California
11 legislature and is expected to be signed into law by the governor imminently. However, Uber
12 has nevertheless publicly and defiantly stated, including through its General Counsel Tony West,
13 that it will not classify its drivers as employees.¹ Uber has stated that it will not reclassify its
14 drivers, even though the legislature has clearly intended for Uber to be covered by this statute;
15 indeed, the author of the statute, Assemblywoman Lorena Gonzalez, has made clear that Uber
16 (and similar “gig economy” companies) would not be exempted from the law. Uber specifically
17 lobbied to obtain a “carve-out” exemption from the law, which it did not receive from the
18 legislature.
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25 ¹ See Conger, Kate and Noam Scheiber, Confusion and Defiance Follow California’s New
26 Gig-Worker Law, NEW YORK TIMES (Sept. 11, 2019); Miller, Cheryl, Uber's Top Lawyer Vows
Fight as California Embraces Sweeping New Labor Rules, THE RECORDER (Sept. 11, 2019).

V. CLASS ACTION ALLEGATIONS

33. The class representative, Angela McRay, has brought this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of Uber drivers who have worked for Uber in California.

34. The class representative and other class members have uniformly been misclassified as independent contractors.

35. The members of the class are so numerous that joinder of all class members is impracticable.

36. Common questions of law and fact regarding Uber's conduct exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether the work performed by class members—providing transportation service to customers—is within Uber’s usual course of business, and whether such service is fully integrated into Uber’s business;
- b. Whether class members have been required to work under Uber’s direction and control;
- c. Whether class members are engaged in an independently established business or occupation while they are transporting Uber customers;
- d. Whether class members have been required to bear the expenses of their employment, such as expenses for their vehicles, gas, and other expenses;
- e. Whether class members have suffered other violations of the California Labor Code and Wage Orders, as described herein.

37. The class representative is a member of the class, who suffered damages as a result of Defendant's conduct and actions alleged herein.

38. The class representative's claims are typical of the claims of the class and she has the same interests as the other members of the class.

39. The class representative will fairly and adequately represent and protect the interests of the class. The class representative has retained able counsel experienced in class action litigation and particularly in the allegations included here. The interests of the class representative are coincident with, and not antagonistic to, the interests of the other class members.

40. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

41. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. The class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty in the management of this action as a class action.

COUNT I
Declaratory Judgment
Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2201

42. An actual controversy of sufficient immediacy exists between the Parties as to whether Uber has failed to comply with its obligations under the California Labor Code, as described above.

43. Uber's conduct in misclassifying its drivers, including Plaintiff McRay, as independent contractors, failing to ensure that they are reimbursed for their necessary business

1 expenditures, failing to ensure that they receive minimum wage for all hours worked, overtime
2 pay, and other protections of California's Labor Code and Wage Orders, contravenes California
3 state law.

4 44. As a result of the factual allegations above, Plaintiff and all Uber drivers in
5 California have suffered actionable harm, as they are not properly compensated for their work
6 for Uber.

7 45. Plaintiff seeks an order of this Court pursuant to 28 U.S.C. §§2201-02 and Fed. R.
8 Civ. P. 57 declaring that, as a result of its misclassification of its drivers, Uber has violated the
9 California Labor Code and Wage Orders and declaring that Uber must comply with the Labor
10 Code and Wage Orders.

11 46. The injunction that Plaintiff seeks is in the nature of a public injunction and is not
12 solely for the benefit of herself and other Uber drivers. Instead, ordering Uber to comply with
13 the California Labor Code is in the public interest because Uber's violation of the Labor Code
14 and Wage Orders diminishes labor standards more generally in the California economy and
15 particularly in the transportation industry. Complying competitors are put at a disadvantage
16 when companies such as Uber flout the Labor Code and Wage Orders by misclassifying their
17 employees as independent contractors. Public funds are also impacted by these violations
18 because the state incurs costs in supporting and providing services to employees who are not
19 properly paid and do not even receive minimum wage. The California Supreme Court made a
20 strong statement in the recent Dynamex decision – and the California legislature has now
21 reinforced that statement by passing Assembly Bill 5 -- of the importance to the public good of
22 employers properly classifying their workers as employees. That public interest is harmed by an
23 employer such as Uber ignoring the decision and continuing to classify its employees as
24 independent contractors.
25
26

COUNT II**Expense Reimbursement****Violation of Cal. Lab. Code § 2802, Wage Order 9-2001**

47. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber's conduct, as set forth above, in misclassifying its drivers as independent contractors, and failing to reimburse them for expenses they paid that should have been borne by their employer, including but not limited to gas, insurance, car maintenance, and phone data charges, constitutes a violation of California Labor Code Section 2802 and Wage Order 9-2001.

48. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT III**Willful Misclassification****Violation of Cal. Lab. Code § 226.8**

49. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in continuing to classify drivers as independent contractors notwithstanding the California Supreme Court's decision in Dynamex Operations W., Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh'g denied (June 20, 2018), and notwithstanding the California Legislature's passage of Assembly Bill 5, both of which make clear that Uber drivers are employees under California law, violates Cal. Lab. Code §226.8 and constitutes willful misclassification.

50. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT IV
Minimum Wage

**Violation of Cal. Lab. Code §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199;
Wage Order 9-2001; San Francisco Minimum Wage Ordinance;
Los Angeles Citywide Minimum Wage Ordinance;
Los Angeles County Minimum Wage Ordinance**

51. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber's conduct, as set forth above, in failing to ensure its drivers receive minimum wage for all hours worked as required by California law, violates Cal. Lab. Code §§ 1197, 1194, 1182.12, 1194.2, 1197.1, 1199 and Wage Order 9-2001 (as well as the higher minimum wage rates established by the San Francisco Minimum Wage Ordinance, the Los Angeles Citywide Minimum Wage Ordinance, and the Los Angeles County Minimum Wage Ordinance, for those drivers who worked in those jurisdictions).

52. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT V
Overtime

Violation of Cal. Lab. Code §§ 1194, 1198, 510 and 554; Wage Order 9-2001

53. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Defendant's conduct, as set forth above, in failing to pay its employees the appropriate overtime premium for overtime hours worked as required by California Law, violates Cal. Lab. Code §§ 1194, 1198, 510 and 554 and Wage Order 9-2001.

54. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT VI**Failure to Provide Accurate Itemized Pay Statements**
Violation of Cal. Lab. Code § 226(a), 226.3; Wage Order 9-2001

55. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber's conduct, as set forth above, in failing to provide proper itemized wage statements, as required by California state law, violates Cal. Lab. Code §226(a) and Wage Order 9-2001.

56. This claim is brought on behalf of a class of similarly situated individuals who have worked as drivers for Uber in the state of California.

COUNT VII**Unfair Business Practices**
Violation of Cal. Bus. & Prof. Code §17200, *et seq.*

57. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein. Uber's conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Uber's conduct constitutes unlawful business acts or practices, in that Uber has violated California Labor Code §§ 2802, 1194, 1198, 510, 554, 1197, 1194, 1182.12, 1194.2, 1197.1, 1199, 226.8, and 226(a). As a result of Uber's unlawful conduct, Plaintiff and class members suffered injury in fact and lost money and property, including, but not limited to business expenses that drivers were required to pay and wages that drivers were due. Pursuant to California Business and Professions Code § 17203, Plaintiff and class members seek declaratory and injunctive relief for Uber's unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiff and class members who worked for Uber are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

- a. Declare that Uber's actions described in this Complaint violate the rights of Plaintiff and Uber drivers throughout California;
- b. Declare and find that the Uber has violated Wage Order 9-2001, the UCL, and Cal. Lab. Code 226(a), 226.3, 226.7, 510, 558, 1184.12, 1194, 1194.2, 1197, 1197.1, 1199, 1198, and 2802 as well as the San Francisco Minimum Wage Ordinance, the Los Angeles Citywide Minimum Wage Ordinance, and the Los Angeles County Minimum Wage Ordinance;
- c. Certify a class action under Count I through VII and appoint Plaintiff Angela McRay and her counsel to represent a class of Uber drivers in the state of California;
- d. Award compensatory damages, including all expenses and wages owed, in an amount according to proof;
- e. Award pre- and post-judgment interest;
- f. Award reasonable attorneys' fees, costs, and expenses;
- g. Issue a declaratory judgment that Uber has violated the California Labor Code and Wage Orders in connection with its misclassification of drivers as independent contractors;
- h. Issue public injunctive relief in the form of an order requiring Uber to comply with the California Labor Code and Wage Orders and other provisions cited herein; and
- i. Award any other relief to which the Plaintiff and the class may be entitled.

Respectfully submitted,

ANGELA MCRA Y, individually
and on behalf of all others similarly situated,

By their attorneys,

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